



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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September 24, 1997
AO-97-20

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Carol L. Coakley, Treasurer
Middlesex, Norfolk & Worcester Regional Democratic Alliance
50 Bridge Street
Millis, MA 02054

Re: M.G.L. c. 55, s. 11

Dear Ms. Coakley:

This letter is in response to your August 1, 1997 request for an advisory opinion.

The Middlesex, Norfolk & Worcester Regional Democratic Alliance (the Alliance) "is a coalition of ten towns¹ which have joined together to help elect Democrats to office and to support the Democratic platform."² The Alliance would like to distribute a mailing to all Democratic elected officials and declared candidates in your area. The mailing would ask recipients to sponsor a periodically issued newsletter. For a \$50 or \$100 contribution, a candidate or elected office holder would be considered a "co-sponsor" or "sponsor."

Question

Would the mailing be consistent with section 11 of M.G.L. c. 55, the Massachusetts campaign finance law?

Answer

Yes, but only if the mailing is distributed to **candidate's committees** rather than directly to candidates or office holders.

¹ Our understanding is that the Alliance is composed of persons representing ten Democratic town party committees.

² We assume that the Alliance's purpose may be derived from the sample mailing which you submitted with your letter. If, as suggested in that mailing, the primary purpose of the Alliance is to raise funds and make expenditures "for the purpose of influencing the nomination or election of candidates" the Alliance should file a statement of organization with this office as a political action committee as soon as possible. See M.G.L. c. 55, s. 1 and OCPF advisory opinion AO-95-19. In contrast, as noted in AO-95-19, an organization which is engaged in "party building activities" of a primarily social nature is not required to become a PAC.

Discussion

Section 11 provides as follows:

No person, no political committee and no person acting under the authority of a political committee or in its behalf, shall demand, solicit, ask or invite **from a candidate for nomination or election to public office, or a person occupying an elective public office**, any payment or gift of money or other valuable thing, or promise of payment or gift of money or other valuable thing for advertising, gratuities, donations, tickets, programs, or any other purpose whatsoever; and no such candidate for nomination or election, and no one occupying an elective public office, shall make any such payment or gift, or promise to make any such payment or gift, to any person, political committee, or any person acting under the authority of a political committee, if such person or political committee has demanded, solicited, asked, or invited from him any such payment, gift or promise of payment or gift; but this section shall not apply to the soliciting or making in good faith of gifts for charitable or religious purposes.

Violation of any provision of this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars.

M.G.L. c. 55, s. 11, (emphasis added).

The Act which inserted the prohibition into the General Laws was called an Act "to prevent corrupt practices in elections, and to provide for publicity of election expenses." See Section 11 of Chapter 416 of the Acts of 1892. The section was apparently designed to insulate candidates from personal pressure which could otherwise be brought to bear by persons or political committees asking the candidate directly for contributions or donations: A **candidate** should not be solicited to make a contribution or donation to any other person or political committee. A person or political committee may, however, solicit a **candidate's committee** to make a contribution or donation.

The Attorney General has previously advised that the distinction between political committees³ and candidates is significant. Specifically, the Attorney General has concluded that persons in the service of the commonwealth or its subdivisions may contribute to **political committees** organized on behalf of other persons in the service, even if under the language of section 15 (in 1964, numbered as section 13) such contributions could not be made to persons in the service who did not have political committees.⁴ See Opinion of the Attorney General, October 27, 1964, in which the Attorney General observed that

³ The campaign finance law was amended in 1994 to include a definition for the term "candidate's committee." See M.G.L. c. 55, s. 1, as amended by Chapter 43 of the Acts of 1994. Sections of chapter 55 enacted before 1994 refer to "political committees" organized on behalf of candidates rather than "candidate's committees."

⁴ Chapter 349 of the Acts of 1996 amended section 15 to state that the provision should not be construed to prohibit persons in public service from making contributions to committees or candidates.

political committees “are mentioned in the General Laws for the first time in Chapter 416 of the Acts of 1892. That Chapter authorized contributions to political committees, and provided for the selection of a treasurer for every such committee . . .” Chapter 416 of the Acts of 1892 also introduced the prohibition which became section 11 of the current statute. Therefore, the Legislature was presumably aware of the distinction when the prohibition was enacted.

To help understand the meaning of statutes, the courts have established several rules of construction. Three in particular are relevant in this instance: First, the statute must be construed narrowly because violation of its provisions may be punished as a crime. See Weld for Governor v. Director of OCPF, 407 Mass. 761, 766 (1990); second, the use of terms in the statute must be construed in association with other statutory language and general statutory plan. Polaroid Corp. v. Commissioner of Revenue, 393 Mass. 490 (1984); and third, where words are used in one part of the statute in a definite sense, they should be given the same meaning in another part of the statute. Beeler v. Downey, 387 Mass. 609 (1982). Application of these rules leads to the conclusion that although section 11 was meant to prohibit the direct solicitation of office holders or candidates, it was **not** meant to prohibit the solicitation of a candidate’s political committee.

Section 11 states, in part, that no person or political committee may solicit money “from a candidate for nomination . . . or a person occupying an elective public office.”⁵ Conspicuously absent from the prohibition is reference to such solicitation of a **political committee** organized on behalf of a candidate or office holder. Solicitation of a political committee rather than a candidate is allowed by section 11. Further, section 6 specifically provides for political committees to make contributions to other political committees. A prohibition against solicitation by one committee of another would not be consistent with section 6.

The labels “political committee” and “candidate” are specifically defined in section 1 of the campaign finance law. The term “political committee” is used throughout chapter 55 where the Legislature has intended to apply a particular requirement to the group of persons organized on behalf of a candidate rather than to the candidate personally. The terms candidate and political committee are not synonymous. Compare s. 2 (obligations of **candidate** to maintain records) with s. 5 (obligation of **political committee** to file statement of organization). Where it has wanted to do so, the Legislature has made provisions of the law apply to both candidates and their committees. See e.g., sections 6A, 7A, 10, 10A, and 18.

⁵ Given its context within chapter 55, we would interpret the section to be limited to solicitations for any political purpose or for any purpose relating to the candidate’s or official’s position as either a candidate or elected official.

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For the foregoing reasons, the Alliance may not solicit office holders or candidates, but may solicit their political committees.

This opinion is issued on the basis of representations in your letter and solely within the context of the campaign finance law.

I encourage you to contact us in the future if you have further regarding the campaign finance law.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan". The signature is written in a cursive style with a large, stylized "M" and "S".

Michael J. Sullivan
Director